

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Ins.APP.No. 34 of 2007()

IC.67/2002 of EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANT/RESPONDENT

THE REGIONAL DIRECTOR
E.S.I.CORPORATION THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS: APPLICANT

M/S.MERON,SANTO GOPALAN ROAD,
COCHIN,REPRESENTED BY KURIAN JOSE
POWER OF ATTORNEY HOLDER

BY ADV. SRI.V.P.SUKUMAR

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD
ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

Insurance Appeal No.34 of 2007

Dated this the 15th October, 2007.

J U D G M E N T

Action for coverage from 1.2.1993 against the respondents was set aside by the Insurance Court on two grounds. One ground was that the claim was barred by limitation. The second ground was that Ext.D1, Inspection Report, was arbitrary and unsustainable. In Ext.D1 report, the Insurance Inspector had stated that there were more than 10 persons working in the establishment. He was examined as DW.1. He had admitted that since the muster roll does not contain more than 10 employees, he was not in a position to state whether there were more than 10 employees.

2. In **Employees State Insurance Corporation v. Santhakumar** (2007(1) KLT 133), the Supreme Court has held that there is no bar or limitation for the claim. After hearing both sides, I am of the view that how many employees were working in the establishment at the relevant period is also a matter to be re-considered. So, for that purpose, the case has to go back.

In the result, the appeal is allowed. The order passed by the Insurance Court in I.C.No.67/2002 is hereby set aside. The matter is remanded to the Insurance Court for fresh disposal, after giving an opportunity to both sides to adduce further evidence. I make it clear that I am not expressing any opinion regarding the finding of the Insurance Court that the appellant failed to establish that there were 10 or more employees working in the establishment on the crucial date. The Insurance Court shall decide that point also untrammelled by any observations contained in this judgment.

**K.PADMANABHAN NAIR,
JUDGE**

nj.